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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE SOTO AND ALICIA SOTO,)	
)	
Plaintiffs,)	2:09-cv-01546-GEB-EFB
)	
v.)	<u>ORDER</u> *
)	
COUNTRYWIDE HOME LOANS, MORTGAGE)	
ELECTRONIC REGISTRATION SYSTEMS,)	
INC., COUNTRYWIDE FULL)	
SPECTRUM LENDING AND DOES 1-20)	
INCLUSIVE)	
)	
Defendants.)	
_____)	

On August 6, 2009, Defendants Countrywide Home Loans and Mortgage Electronic Registration Systems, Inc. ("Defendants") filed a Rule 12(b)(6) motion to dismiss and a Rule 12(f) motion to strike portions of the Plaintiffs' complaint (Docket No. 11.) However, on August 8, 2009, Plaintiffs filed a first amended complaint (Docket No. 15.)

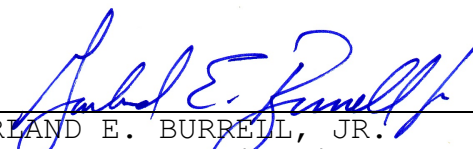
Under Rule 15(a)(1) "[a] party may amend its pleading once as a matter of course: before being served with a responsive pleading...." Fed. R. Civ. P. 15(a)(1)(A). Here, no Defendant has filed an answer

* This matter was determined to be suitable for decision without oral argument. E.D. Cal. R. 78-230(h).

1 in this case, and neither a motion to dismiss nor a motion to strike
2 are considered responsive pleadings for the purposes of Rule 15(a).
3 See Crum v. Circus Circus Enter., 231 F.3d 1129, 1130 n.3 (9th Cir.
4 2000) ("A motion to dismiss is not a 'responsive pleading' within the
5 meaning of Rule 15."); Phillips v. Borough of Keyport, 179 F.R.D. 140,
6 145-46 (D. N.J. 1998) (stating that a motion to strike is not a
7 responsive pleading for the purposes of Rule 15).

8 Since Plaintiffs were authorized to amend their original
9 complaint, the first amended complaint is now the operative pleading.
10 See Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir.
11 1997) (stating that an amended complaint supersedes the original
12 complaint). Therefore, Defendants' pending motions which do not
13 address the operative pleading are denied as moot.

14 Dated: September 16, 2009

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GARLAND E. BURRELL, JR.
United States District Judge